



May 27, 2022

Via Electronic Mail Only

The Hon. Maggie Toulouse Oliver
New Mexico Secretary of State
325 Don Gaspar, Suite 300
Santa Fe, NM 87501

New Mexico Department of State
Attn: Bureau of Elections
Sos.elections@state.nm.us

**Re: Notice of Violation of National Voter Registration Act &
Request for Records**

Dear Secretary Toulouse Oliver:

We represent the Voter Reference Foundation (“VRF”) and write on its behalf. You are receiving this letter because you are the designated chief election official under the NVRA. This letter serves as statutory notice to the New Mexico Secretary of State and the State of New Mexico that they are in violation of the National Voter Registration Act (“NVRA”), specifically its public inspection provision, 52 U.S.C. § 20507(i)(1). Voter registration data, including registration lists, fall within the scope of this requirement and must be made available for public inspection. New Mexico law prohibits access to voter registration data for all but a few limited purposes, in violation of the NVRA’s edict that the State must “make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1).

On February 15, 2022, VRF requested information related to the number of registered voters that voted in the November 3, 2020 election and have subsequently been placed in an inactive, canceled, deleted, or removed status between 11/3/20 and 4/13/21. See Exhibit A. The records requested relate to “the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” and are therefore subject to the NVRA’s public inspection requirement. To date, the Secretary of State has not made the requested data available for inspection



Graves Garrett LLC

Notice of NVRA Violation

May 27, 2022

Page | 2

and has taken the position that it will not fulfill *any* requests from VRF, including the February 15, 2022 request. See Ex. A.

BACKGROUND

The Secretary of State is the chief election officer of the state, N.M. Stat. § 1-2-1(A), and is responsible for developing, implementing, establishing, and supervising New Mexico's statewide computerized voter registration system in compliance with HAVA to facilitate voter registration and to provide a central database containing voter registration information for New Mexico. N.M. Stat. § 1-5-30(A).

VRF previously requested voter registration records from the Secretary. Ex. A. The Secretary never fulfilled that request and has taken the position that it will not fulfill any requests for information from VRF. *Id.* VRF also obtained voter data from a previous request that Local Labs filed on its behalf.

VRF uses voter data and information to increase election transparency and participation, furthering the purposes of the NVRA to ensure the accuracy and currency of official lists of eligible voters. It does this by combining the data with those of other states, and making this nationwide data set publicly searchable by all those who associate with VRF by agreeing to use the data for election-related and non-commercial purposes. The Secretary reacted to VRF's work by attacking VRF in the press, threatening criminal enforcement, making it clear that she disagrees with VRF's mission, and on account of that mission, making clear that she will not release any records to VRF.

PUBLIC INSPECTION VIOLATIONS

The NVRA requires each State to maintain for at least 2 years and "make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official voter lists of eligible voters." 52 U.S.C. § 20507(i)(1). Those "records" which must be made available under the NVRA include the "file maintenance list" and "voter data" as those terms are defined in N.M. Stat. § 1-5-2, as well as "voter data" as that term is used in N.M. Stat. § 1-4-5.5. Both the information obtained from the Local Labs request and the information sought in the February 15, 2021 request regarding the removal of voters from the rolls are "records" as that term is defined in the NVRA.



Graves Garrett LLC

Notice of NVRA Violation

May 27, 2022

Page | 3

(i) New Mexico's restrictions on public inspection of certain types of voter data are preempted by the NVRA.

On February 15, 2022, VRF requested "the total count, by county/precinct, of any registered voters who cast a ballot in the November 3, 2020, who have been subsequently placed in an inactive, canceled, deleted, removed (or any registration status other than active) or any voter that has been removed or deleted from the voter rolls between November 3, 2020 and April 13, 2021." Ex. A. The NVRA specifically requires states to make reasonable efforts to maintain the accuracy of the rolls, including by removing the names of ineligible voters from the official lists of eligible voters due to the death of the registrant or a change in the residence of the registrant to a place outside the jurisdiction in which he or she is registered. 52 U.S.C. § 20507(a)(4). Thus, documents reflecting or related to this maintenance function are "records" which must be made available for public inspection under the NVRA. 52 U.S.C. 50507(i)(1) (public inspection requirement applies to "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters...").

Yet § 1-4-5.5 does not provide any right to inspect the "file maintenance list" as that term is defined in N.M. Stat. § 1-5-2, regardless of the purpose motivating the request. The public inspection right under the NVRA is an unqualified right of access. Because New Mexico law lacks any provision for public inspection of the "file maintenance list", a "record" subject to the NVRA's public inspection requirement, it is in violation of federal law.

(ii) The Secretary's refusal to respond to VRF's February 15, 2022 request violates the NVRA's public inspection provision.

Additionally, the Secretary's office never responded to VRF's request and internally told staff that "we are not fulfilling records requests from VoteRef." Ex. A. To be very clear, VRF is ready and willing to sign the same version of the affidavit signed by Local Labs in April 2021, which expressly allows the sharing and use of data for VRF's purposes, and which the Director of Elections stated it would still accept. However, the Secretary has a policy of refusing to share data with VRF. By failing or refusing to provide the requested records, the Secretary's office has violated the NVRA's public inspection provision.



Notice of NVRA Violation

May 27, 2022

Page | 4

REQUESTS FOR RECORDS

Finally, pursuant to your obligations under the NVRA, 52 U.S.C. § 20507(i) and New Mexico law, N.M. Stat. § 1-4-5.5, please make available to us the following records concerning “the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency” of New Mexico’s official eligible voter lists:

1. A complete list, by county/precinct, of any registered voters who cast a ballot in the November 3, 2020 General Election, who have been subsequently placed in an inactive, canceled, deleted, removed (or any registration status other than active) status, or any voter that has been removed or deleted from the voter rolls between November 3, 2020 and April 13, 2021, including total count of same.
2. Current voter registration data, including voter history, for all active, inactive, suspended, and cancelled status voters (including any registration status other than active).

VRF’s intended election use comprises two distinct projects. For its first project, just as VRF publishes voter data for many other states, and as it recently published voter data in New Mexico, VRF intends to publish the requested information online for election related purposes, but it will only publish the personal information of voters online if VRF is granted relief in *Voter Reference Foundation, et al. v. Balderas, et al.*, case number 1:22-CV-00222 in the United States District Court for the District of New Mexico (the “Federal Litigation”) or in any other legal proceeding.

For its second project, VRF intends to analyze the records, information, and data provided in response to the above requests in order to engage in a discrepancy review of the New Mexico voter rolls. VRF intends to publish this analysis online without disclosing the personal information of any individual voter. VRF will comply with this non-public-disclosure promise for the data it uses on its second project regardless of whether it prevails in the Federal Litigation. And again, for the sake of clarity, no personal information of any individual voter will be published online unless VRF is granted relief in the Federal Litigation or in any other legal proceeding.



Graves Garrett LLC

Notice of NVRA Violation

May 27, 2022

Page | 5

If you deny this request in whole or in part for any reason, please notify us in writing indicating the basis of your denial.

Signed Voter Information Authorization forms for each of the above requests are attached to this letter as Exhibit B. Please contact us to facilitate payment for the fulfillment of these requests.

CONCLUSION

The State and your office are required to correct the violations identified herein within 20 days of receipt of this notice, as each violation occurred within 120 days of June 7, 2022, the date of New Mexico's primary. 52 U.S.C. § 20510(b)(2). If the State and your office do not take specific action to correct these violations within 20 days of this notice, VRF reserves any and all rights against your office and the State of New Mexico. VRF may seek recourse via a lawsuit, 52 U.S.C. § 20510(b), and seek an award of its attorney's fees, expenses, and costs incurred in pursuing that action. 52 U.S.C. § 20510(c).

Because VRF is currently in litigation with the State regarding related issues, we have copied the Secretary of State's counsel of record, Olga Serafimova, on this correspondence. Please contact me at your earliest convenience to advise whether or not your office and/or the State of New Mexico intends to correct these violations.

Respectfully,

Edward D. Greim

cc: Olga Serafimova, Esq., New Mexico Attorney General's Office
Sharon Pino, Deputy Secretary of State
Mandy Vigil, Elections Director
Gina Swoboda, Executive Director of VRF
Carter Harrison IV, Esq., Counsel to VRF

Enclosures:

Ex. A, March 11, 2022 Email re: Not Fulfilling VRF Requests
Ex. B, May 27, 2022 Voter Information Authorization Forms

From: [Rostock, Patrick, SOS](#)
 To: [Vigil, Mandy, SOS](#)
 Cc: [Pino, Sharon, SOS](#)
 Subject: FW: [Ticket #41418] [EXTERNAL] Information Request (LB) - Spiceworks
 Date: Friday, March 11, 2022 8:36:00 AM
 Attachments: [image001.jpg](#)

Hi Mandy and Sharon,

Per Dylan's contact with the AG, we are not fulfilling records requests from VoteRef. Any information on how to proceed with this would be appreciated. I am also happy to forward this to the AG but I'm unsure what contact we have who is handling this. The request is clearly trying to create an aggregate picture of the voter rolls on election day 2020, which lends credence to the idea that VoteRef and Erin Clements/New Mexico Audit Force are working in concert.

Best,

Email Signature Logo



Patrick Rostock | Paralegal & Records Custodian

New Mexico Office of the Secretary of State
 325 Don Gaspar, Ste. 300 | Santa Fe NM 87501
 Desk: (505) 827-7941

patrick.rostock@state.nm.us

Follow us on [Facebook](#) + [Twitter](#)

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Elections, SOS, SOS <SOS.Elections@state.nm.us>

Sent: Thursday, March 10, 2022 5:07 PM

To: Rostock, Patrick, SOS <Patrick.Rostock@state.nm.us>

Subject: [Ticket #41418] [EXTERNAL] Information Request (LB) - Spiceworks

On Mar 10, 2022 @ 05:06 pm, data@voterreferencefoundation.com wrote:

Good afternoon,

Can you please provide a status update on the request?

Thank you,

Voter Reference Foundation

Ticket Overview

[Reply Now](#)

PRIORITY High

CREATOR data@voterreferencefoundation.com

ASSIGNEE Patrick Rostock

Ticket Commands let you take control of your help desk remotely. For a full list of available

commands and usage [click here](#).

Examples: #close, #add 5m, #assign to bob, #priority high

Ticket History

On Feb 16, 2022 @ 09:13 am, Charlotte Chinana wrote:

Assigned to Patrick Rostock.

On Feb 15, 2022 @ 04:06 pm, data@voterreferencefoundation.com wrote:

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Election Official,

Please provide us with the total count, by county/precinct, of any registered voters who cast a ballot in the November 3, 2020, who have been subsequently placed in an inactive, canceled, deleted, removed (or any registration status other than active) or any voter that has been removed or deleted from the voter rolls between November 3, 2020 and April 13, 2021.

Thank you,

Voter Reference Foundation

:la



Voter Data Request Form

Please select one of the following:

☐ Electronic File ☐ Printed List ☐ Mailing Labels

VOTER INFORMATION AUTHORIZATION

NOTE: Minimum charge for any request is \$25.00

Please indicate the purpose of this request:

☐ Governmental Use

☐ Campaign Use

☒ Election Related

Please indicate the type of file that you are requesting:

☒ Statewide

☐ District _____

☐ County(s) _____

☐ Other: _____

Please indicate all information that you are requesting:

NOTE: All files come with registrant name, address (both physical and mailing), year of birth, party affiliation, precinct assignment, jurisdiction and registrant ID number. Any additional fields must be indicated below.

☒ Districts

(all districts associated with a voter)

☒ Voting History

(elections a voter has participated in)

☒ Method Voted

(i.e. absentee, early or Election Day)

☒ Other*: Current Voter Registration data, including voter history for all active, inactive, suspended, and cancelled status voters (including any registration status other than active)

*If you request information that is not available in the voter system you will be notified before request is fulfilled.

Information of Requestor

Name: Gina Swoboda

Organization: Voter Reference Foundation

Address: 1901 Butterfield Road, Suite 120, Downers Grove, IL 60515

Phone: (844) 302 - 2109

Email Address: data@voterreferencefoundation.com

Date: 05 / 27 / 2022

Authorization

Unlawful use of the information requested on this form shall consist of willful selling, loaning, providing access to or otherwise surrendering, duplicating or alteration of information as stated in the Voter Records System Act (§1-5-1 through 1-5-31 NMSA 1978).

I hereby swear that the requestor will not use or make available to others to use the requested material for purposes other than governmental, election, research and campaign purposes under penalty of law.

Signature of Requestor

For Office Use Only

Total Cost: \$ _____ Date Received: _____ / _____ / _____ Date Completed: _____ / _____ / _____

Comments: _____ Receipt Number: _____



Voter Data Request Form

Please select one of the following:

☐ Electronic File ☐ Printed List ☐ Mailing Labels

VOTER INFORMATION AUTHORIZATION

NOTE: Minimum charge for any request is \$25.00

Please indicate the purpose of this request:

☐ Governmental Use

☐ Campaign Use

☒ Election Related

Please indicate the type of file that you are requesting:

☒ Statewide

☐ District _____

☐ County(s) _____

☐ Other: _____

Please indicate all information that you are requesting:

NOTE: All files come with registrant name, address (both physical and mailing), year of birth, party affiliation, precinct assignment, jurisdiction and registrant ID number. Any additional fields must be indicated below.

☒ Districts

(all districts associated with a voter)

☒ Voting History

(elections a voter has participated in)

☒ Method Voted

(i.e. absentee, early or Election Day)

☒ Other*: Please provide a complete list, by county/precinct, of any registered voters who cast a ballot in the November 3, 2020 General Election, who have been subsequently placed in an inactive, canceled, deleted, removed (or any registration status other than active) status, or any voter that has been removed or deleted from the voter rolls between November 3, 2020 and April 13, 2021, including total count of same.

*If you request information that is not available in the voter system you will be notified before request is fulfilled.

Information of Requestor

Name: Gina Swoboda

Organization: Voter Reference Foundation

Address: 1901 Butterfield Road, Suite 120, Downers Grove, IL 60515

Phone: (844) 302 - 2109

Email Address: data@voterreferencefoundation.com

Date: 05 / 27 / 2022

Authorization

Unlawful use of the information requested on this form shall consist of willful selling, loaning, providing access to or otherwise surrendering, duplicating or alteration of information as stated in the Voter Records System Act (§1-5-1 through 1-5-31 NMSA 1978).

I hereby swear that the requestor will not use or make available to others to use the requested material for purposes other than governmental, election, research and campaign purposes under penalty of law.

Signature of Requestor

For Office Use Only

Total Cost: \$ _____ Date Received: _____ / _____ / _____ Date Completed: _____ / _____ / _____

Comments: _____ Receipt Number: _____